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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,147	06/15/2007	Jean Marc Poirier	045636-5086	2733
9629 7590 10/13/2010 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
HUSON, MONICA ANNE				
ART UNIT		PAPER NUMBER		
1742				
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10/13/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/586,147

**Applicant(s)**

POIRIER ET AL.

**Examiner**

MONICA A. HUSON

**Art Unit**

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2010.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) 15-17 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-14 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of claims 1-14 in the reply filed on 21 July 2010 is acknowledged.

It is noted that the previous examiner presented the Requirement for Restriction under the US statute, not the statute which applies to 371 applications. For purposes of completeness, the restriction requirement is repeated below under the proper code.

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-14, drawn to a method.

Group II, claim(s) 15-17, drawn to an article.

The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature that links the claims of groups I and II is a mixture of polyolefin, a barrier material, and a compatibilizer. However, a mixture of polyolefin, a barrier material, and a compatibilizer is known in the art as evidenced by the rejection below based on Mortellite and Austen. Therefore, the special technical feature fails to define a contribution over the prior art and unity of invention is lacking between the two groups.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, and 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortellite et al. (U.S. Patent Application Publication 2003/0041952), in view of Austen et al. (U.S. Patent 4,341,827). Regarding Claims 1-4, 11, and 12, Mortellite et al., hereafter "Mortellite," show that it is known to carry out a method for manufacturing a protective article with a contiguous lamellar structure ([0010]) from a heterogeneous material comprising a polyethylene, an EVA copolymer, and a compatibilizer of polyolefin ([0026]), the method comprising blending the heterogeneous material, extrusion of the blend to form a film, and stretching the film ([0022]), and thermoforming the film, the thickness being controlled so that the thickness is between 60 and 190um (element 10', 11'; [0029, 0052]). Mortellite does not show stretch blow molding a film tube. Austen et al., hereafter "Austen," shows that it is known to carry out a method of making a film tube (Abstract) comprising extruding a polyethylene material and stretch blow molding the tube (Column 2, lines 28-47), wherein the blow ratio and stretch ratios are from 1 to 5 (Column 17, lines 51-59). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Austen's stretch blow molding step in Mortellite's molding process in order to create an article having improved tensile strength properties (see Austen, Column 4, lines 10-26).

Regarding Claims 7-8, Mortellite shows the process as claimed as discussed in the rejection of Claim 1 above, including using solid particles in his mixture ([0027]), but he does not show the specifically claimed composition amounts or particle sizes. However, where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation (MPEP 2144.05 (II)(A)). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use any appropriate composition or particle size, such as that which is claimed, during Mortellite's molding process in order to satisfy customer specifications regarding the chemical makeup of the final article.

Regarding Claims 9-10, Mortellite shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the blend is conveyed to the extruder in a melted state and extruded through a flat die ([0022]), meeting applicant's claim.

Regarding Claim 13, Mortellite shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein a nonwoven is complexed with the polymer ([0028]). He does not show complexing the nonwoven after the stretching and before the thermoforming, however, selection of any order of performing process steps is prima facie obvious (MPEP 2144.04 (IV)(C)). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to add the nonwoven at any appropriate time in the process, such as that which is claimed, in order to avoid stretching the nonwoven.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortellite and Austen, further in view of Lu et al. (U.S. Patent 4,770,837). Mortellite shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show the claimed compatibilizer. Lu et al., hereafter "Lu," show that it is known to carry out a method of extruding a composition of polyethylene, EVA, and a compatibilizer, wherein the compatibilizer is a polyolefin with carboxylic or anhydride, and wherein the carbonyl functional groups are between 0.1 and 4% (Column 3, lines 13-34; Column 4, lines 11-21, 32-65). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Lu's compatibilizer as that in Mortellite's molding composition in order to stabilize the structure of the blend (see Lu, Column 4, lines 22-25).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mortellite and Austen, further in view of Degrand (U.S. Patent 6,538,068). Mortellite shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show welding. Degrand shows that it is known to carry out a method of making a film product including a welding step (Abstract). It would have been prima

facie obvious to one of ordinary skill in the art at the time the invention was made to use Degrand's welding step in Mortellite's process in order to obtain articles with elastic behavior and good mechanical properties (see Degrand, Column 4, lines 62-67).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA A. HUSON whose telephone number is (571)272-1198. The examiner can normally be reached on Monday-Friday 7:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Monica A Huson  
Primary Examiner  
Art Unit 1742

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